IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.649 OF 2005

Avinash Gaikwad & ors. .. .. Petitioners
v/s.
State of Maharashtra & ors. .. .. Respondents

Mr.Ramesh Ramamurthy for petitioners.

Mr.R.M.Sawant, GP for res.Nos.1 to 3.

Mr.C.J.Sawant i/by Mr.Rajesh Kachare for res.Nos.5 to 12.

Mr.K.K.Singhvi with Ms.P.A.Purandare for res.No.4.

CORAM : H.L. GOKHALE &
S.C.DHARMADHKARI, JJ.

DATE : 5th May 2005

P.C. :

1. Heard the learned Counsel for the parties.

2. Two questions were raised in this petition. One was regarding the area of each of the tenements to be constructed in the scheme wherein the petitioners are allottees. The Agreement of the developers with MHADA refers to D.C. Regulation 33(9) in Clause No.1 thereof. It was, therefore, submitted that the petitioners are entitled to the area of 225 sq. feet (carpet) which should be excluding the area of balcony.

Reliance is placed on Regulation 35(k) and it is submitted that if Regulation 33(9) is mentioned in Clause No.1 of the Agreement, Clause 35(k) will as well apply.

3. It is not possible to accept this argument inasmuch as this is undoubtedly a scheme under D.C. Regulation 33(7) and sub-Rule (8) of D.C. Regulation 33(7) clearly provides that the relaxation incorporated in Regulation 33(10) is available for a scheme under D.C. Regulation 33(9). This being the position, the first submission of Mr.Mr.Ramamurthy cannot be accepted.

4. The second submission of Mr.Ramamurthy is regarding the height of habitable area. In view of the question raised by the petitioners, we had sought a report from the Municipal Engineer and the same has been submitted to us. This report is signed by one Shri Ulhas Vitthalrao Mahale, Assistant Engineer (Building & Planning). This report shows that the rooms are uniformly of a height of less than 2.7 meters. This height is justified by contending that in the dense areas of the town, a lesser height is permitted. Mr.Ramamurthy, however, draws our attention to the

Specifications for building construction laid down by MHADA for the tenements under its scheme. These specifications are incorporated as a part of the Agreement of re-development between the MHADA and the developers. Clause 4 of these specifications provides as follows:-

> " 4) Walls :- All external walls should be 23 cm brick masonry or 15 cm concrete solid blocks and internal walls should be minimum in half brick masonry. The clear height between roof and floor should not be less than 2.90 m. "

5. Mr.C.J.Sawant, learned Counsel appearing for respondent Nos.5 to 12, initially defended the lower height by submitting that the building is in the dense area of the town and, therefore, such a reduction is permissible. However, subsequently, on instructions of the developers, who are present in Court, he made a statement that in the second rehabilitation building which is yet to be constructed, this height of 2.90 meters between the floor level and the ceiling will be maintained. We make it clear that this height of 2.9 meters will be excluding the width of the

slabs on both the sides i.e. below the floor level and above the ceiling. This takes care of the grievances raised by the petitioners. This correction now will only be with respect to the building which is yet to be constructed. We direct the Municipal Engineer to correct the plans of the second building and to see to it that the building is constructed accordingly.

6. The petition is disposed of.

(H.L. GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)